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OFFICE OF PETITIONS

In re Application of
Tonar et al.
Application No. 10/085,434
Filed: February 28, 2002
Attorney Docket No. GEN-001323C3

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed April 26, 2007, to withdraw the holding of abandonment.

On June 2, 2004, the Office mailed the original final Office action, which set a three-month shortened statutory period for reply. In the absence of a timely filed response, the application became abandoned on September 3, 2004. On February 8, 2005, the Office mailed a Notice of Abandonment. On May 19, 2006, petitioner filed a petition to withdraw the holding of abandonment, which was granted by the decision dated June 28, 2006. On August 25, 2006, the USPTO mailed a new final Office action, which set a three-month shortened statutory period for reply. In the absence of a timely filed response, the application became abandoned again on November 26, 2006. On March 20, 2007, the Office mailed a Notice of Abandonment.

In the present petition, petitioner requested that the Office withdraw the holding of abandonment due to non-receipt of the final Office action mailed on August 25, 2006. The practitioner attested that a search of the file jacket and docket records indicated that the final Office action was not received. In support of his assertion, the practitioner submitted a print out of the docket record for this application, indicating that no entry exists for the Office action. The practitioner asserted that no reply period existed in the docketing system because the final Office action was never received.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the record indicates no irregularity in the mailing of the final Office Action, and in the absence of any irregularity in the mailing, there is a strong presumption that the final Office Action was properly mailed to the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where

the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See MPEP 711.03(c)(I)(A). For example, if a three-month period for reply was set in the non-received Office communication, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office communication must be submitted as documentary proof of non-receipt of the Office communication. **The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail (e.g. if the practitioner has a history of not receiving Office communications).**

After reviewing the documents submitted on petition, the Office concludes that the showing of record is sufficient to warrant withdrawal of the holding of abandonment. As petitioner presented the required showing under 37 CFR 1.181, the petition is **GRANTED**. No petition fee is required.

Technology Center Art Unit 1712 has been advised of this decision. The matter is being referred to the Technology Center's technical support staff for mailing of a new final Office Action. The three (3) month shortened statutory time period for responding to the final Office Action will be set to run from the mailing date of the new final Office Action.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

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